IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Thakur Ji Laxmi Narayan
vs.
State of Rajasthan & Ors.

S.B.CIVIL SECOND APPEAL NO.135/2000 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 24.3.2000 PASSED BY SHRI T.H. SAMA, ADDITIONAL DISTRICT JUDGE NO.3, UDAIPUR IN APPEAL NO.56/1999 (143/1997).

DATE OF JUDGMENT ::: 16.11.2005

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. M Shishodia, for the appellant.

Mr. N Mulchandani) for the respondents
Mr. L Kawadia)

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BY THE COURT:

Heard learned counsel for the parties.

The plaintiff/appellant is aggrieved against the judgment and decree dated 30.5.1997 passed by the trial court by which the plaintiff's suit for permanent injunction and recovery of damages to the tune of

Rs.15,070/- was dismissed by the trial court. The judgment and decree of the trial court was upheld by the first appellate court vide judgment and decree dated 24.3.2000.

According to learned counsel for the appellant, the suit was filed on behalf of the Deity and admittedly, the Deity is in possession of the property in dispute, therefore, the courts below committed serious illegality in not granting decree for injunction against the respondents about their illegal interference in the peaceful enjoyment of the property.

It is also submitted that the alleged construction which was raised by the appellant was not a permanent construction, therefore, there was no violation of any local bylaws about construction and, therefore, the respondents had no right to demolish that structure.

I have considered the submissions of learned counsel for the appellant and perused the reasons given by the two courts below.

It is clear from the facts rather the facts which have been admitted by the respondents in the written statement that existence of land of Khasra No.1008 is not in dispute. It appears that some construction is alleged to have been raised by one Kanhaiya Lal alleging that he raised the construction. Therefore, the two courts below after holding that the plaintiff failed to prove that the temple is private temple and he invested the money, therefore,

dismissed the suit of the plaintiff for recovery of damages on account of demolition caused by the respondents.

In view of the above, looking to the nature of the suit, the trial court was fully justified in refusing even the relief of injunction when there is no threat from the defendants against peaceful enjoyment of the property in dispute and the two courts below held that the structure raised by the plaintiff was without obtaining prior permission from the local bodies.

In view of the above, I do not find that any substantial question of law is involved in this appeal. Hence, this second appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya